REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILIPPINE NATIONAL BANK, Petitioner,	**CTA CASE NO. 7760**
	Members:
- *versus* -	**BAUTISTA,** *Chairperson* **PALANCA-ENRIQUEZ,** and **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 30 2011

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Decision

BAUTISTA, J.:

The Petition for Review filed pursuant to Section 7(a)(2) of Republic Act ("RA") No. 1125, as amended by RA No. 9282 and RA No. 9503, seeks for the refund or issuance of tax credit certificate in the amount of ₱74,598,430.47, representing excess and unutilized creditable withholding taxes for the taxable year 2005.[1]

FACTS OF THE CASE

Petitioner, Philippine National Bank ("PNB"), is a corporation existing under and by virtue of Philippine Laws, with principal office at the PNB Financial Center, President Diosdado Macapagal Boulevard, Pasay City.

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[1] *Records*, pp. 1-1398, with Annexes.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, who is vested with the authority to administer and enforce national internal revenue laws, including, *inter alia*, the power to grant claims for refund of any internal revenue taxes erroneously or excessively paid, assessed or collected. He holds office at the Fourth (4th) Floor, Bureau of Internal Revenue ("BIR") Building, Agham Road, Diliman, Quezon City.[2]

On April 17, 2006,[3] petitioner electronically filed, under Reference No. 120600001019131, its Annual Income Tax Return for taxable year 2005 through the BIR's Electronic Filing and Payment System.

On April 18, 2006, petitioner manually filed its Annual Income Tax Return, together with the required attachments thereto, with the BIR's Large Taxpayers Documents Processing and Quality Assurance Division.

Through letters, with their attachments, dated February 12, 2007, June 22, 2007, and March 10, 2008, and received with respective stamped dates of February 22, 2007, June 25, 2007, and March 13, 2008 by respondent, petitioner filed its claim for refund or issuance of tax credit certificate of its excess payment of income tax liability in the amount of ₱74,598,430.47.[4]

Due to respondent's inaction, petitioner filed the present Petition for Review on April 11, 2008.

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[2] *Id.*, at pp. 1461-1462; Joint Stipulation of Facts and Issues.
[3] April 15, 2006 is a Saturday.
[4] *Records*, pp. 1462-1464; Joint Stipulation of Facts and Issues.

On June 2, 2008, respondent filed his Answer,[5] interposing the following Special and Affirmative Defenses:

> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR);
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> 6. The amount of ₱74,598,430.47 being claimed by petitioner as alleged creditable withholding taxes for taxable year 2005 is not properly documented;
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> 7. Petitioner must show that it has complied with the provisions of Section 204(C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;
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> 8. Furthermore, in an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxations are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466, cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil. 670)**; and
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> 9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such; they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)**.

Petitioner presented Atty. Julian B. Soriano, Maria Lucia Stella P. Castro, and Mary Ann C. Capuchino, as witnesses, and documentary evidence marked as *Exhibits "A" to "JJJ,"* inclusive of submarkings.

On the other hand, respondent, thru counsel, manifested that he will not present any evidence.[6]

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[5] *Id.*, at pp. 1413-1418.
[6] During the hearing on October 11, 2010.

On December 13, 2010,[7] the Court resolved to submit the case for decision, taking into consideration the Memorandum for the Petitioner filed on November 24, 2010,[8] and the Memorandum filed by respondent on December 10, 2010.[9]

Hence, this Decision.

ISSUE

As stipulated upon by the parties, the sole issue for this Court's consideration is:

> WHETHER OR NOT PETITIONER IS ENTITLED TO THE CLAIM FOR REFUND OF OR THE ISSUANCE OF A TAX CREDIT CERTIFICATE IN RESPECT (*sic*) OF EXCESS OR UNUTILIZED CREDITABLE WITHOLDING TAXES FOR THE TAXABLE YEAR 2005 AMOUNTING TO ₱74,598,430.47.[10]

RULING OF THE COURT

In claims for refund or issuance of tax credit certificate of creditable withholding taxes, Section 76 of the 1997 National Internal Revenue Code ("NIRC"), as amended, provides as follows:

> SEC. 76. *Final Adjustment Return.* – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
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> (A) Pay the balance of tax still due; or
> (B) Carry over the excess credit; or

[7] *Records*, p. 1835.
[8] *Id.*, at pp. 1794-1821.
[9] *Id.*, at pp. 1822-1832.
[10] *Id.*, at p. 1464.

(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.

Pursuant thereto, Section 2.58.3 of Revenue Regulations No. 2-98,[11] provides as follows:

SECTION 2.58.3. *Claim for Tax Credit or Refund.* –

(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Proof of remittance is the responsibility of the withholding agent.

(C) *Excess Credits* – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess

[11] Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, dated April 17, 1998.

withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.

(1) If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, he shall make a written request therefor, within two years after the payment of the tax (Ref. Secs. 204(c) and 229 of the Code), provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the purpose. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer.

(2) Sample computation of application of excess credits-ordinary.

	Taxable Period			
	1997	1998-QTR1	1998-QTR2	1998-QTR3
Tax Due	1,000	200	200	500
Less: Tax Withheld	(1,500)	(500)	(300)	0
Net Tax Payable/ Creditable	(500)	(300)	(100)	500

In the above illustration, there is an excess credit in 1997 that can be applied to the subsequent quarter. And if the option to apply the excess credit is initiated in the first quarter of 1998, the taxpayer cannot avail of a refund/tax credit certificate of the excess credit of ₱500 in 1997.

From the foregoing, and as enunciated by this Court in the case of *SC & C Cosmetech Co., Inc., v. Commissioner of Internal Revenue*,[12] a corporation entitled to a tax credit or refund of excess estimated quarterly income taxes paid has two (2) options, *viz*: (1) to carry over the excess credit; or (2) to apply for the issuance of a tax credit

[12] CTA Case No. 6650, June 6, 2005.

certificate or to claim a cash refund. And once the option to carry over has been made, such shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed. The irrevocability rule when taken with the phrase "for that taxable period" refers to that taxable period which the taxpayer made the choice of carry over and not to the next taxable year when the said excess or unutilized tax credits be carried over.

Also in the case of *Philippine Bank of Communications v. Commissioner of Internal Revenue,*[13] the Supreme Court ruled that a corporation must signify in its annual corporate adjustment return, by marking the option box provided in the BIR form, its intention whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.

In the case at bench, albeit petitioner's submission that it had fully complied with the requisites promulgated in the case of *Banco de Oro Savings and Mortgage Bank v. Court of Appeals, et al.,*[14] and that it had effectively exercised its option of claiming a tax credit certificate in accordance with Section 76 of the 1997 NIRC, as amended, the Court, upon careful evaluation of the evidence on record, finds the Petition for Review unmeritorious.

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[13] G.R. No. 112024, January 28, 1999, 302 SCRA 241.
[14] G.R. No. 155682, March 27, 2007, 519 SCRA 93.

Based on the records of the case, petitioner proffered its Annual Income Tax Return[15] for the calendar year 2006 in order to prove that it did not carry over the amount of ₱74,598,430.47 to the succeeding taxable year of 2006.

However, in the case of *Millennium Business Services, Inc., v. Commissioner of Internal Revenue*,[16] the Court sitting *En Banc* ruled in this wise:

> Since the burden of proof is upon the claimant to show that the amount claimed was not utilized or carried over to the succeeding taxable quarters, **the presentation of the succeeding quarterly income tax return and final adjustment return is indispensable to prove that it did not carry over or utilize the claimed excess creditable withholding taxes. Absent thereof, there will be no basis for a taxpayer's claim for refund since there will be no evidence that the taxpayer did not carry over or utilize the claimed excess creditable withholding taxes to the succeeding taxable quarters.**
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> Significantly, a taxpayer may amend its quarterly income tax return or annual Income tax return or Final Adjustment Return which in any case may modify the previous intention to carry-over, apply as tax credit certificate or refund, as the case may be. But the option to carry-over in the succeeding taxable quarters under the irrevocable rule cannot be modified in its final adjustment return.
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> The presentation of the final adjustment return does not shift the burden of proof that the excess creditable withholding tax was not utilized or carried over to the first three (3) taxable quarters. It remains with the taxpayer claimant. **It goes without saying that the final adjustment returns of the preceding and the succeeding taxable years are not sufficient to prove that the amount claimed was utilized or carried over to the first three (3) taxable quarters.**
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> The importance of the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year need not be overly emphasized. All corporations subject to income tax are required to file quarterly income tax returns, on a cumulative basis for the preceding quarters, upon which payment of their income tax has been made. In addition to the quarterly income tax returns, corporations are required to file a final or adjustment return on or

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[15] *Exhibits "CCC-41" to" CCC-44."*
[16] CTA EB Case No. 510 (CTA Case No. 7441), September 28, 2010.

before the fifteenth day of April. **The quarterly income tax return, like the final adjustment return, is the most reliable firsthand evidence of corporate acts pertaining to income taxes, as it includes the itemization and summary of additions to and deductions from the income tax due.** These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process, and guide this Court to the veracity of a petitioner's claim for refund without which petitioner could not prove with certainty that the claimed amount was not utilized or carried over to the succeeding quarters or the option to carry-over and apply the excess was effectively chosen despite the intent to claim a refund.

In the same vein, if the government wants to disprove that the excess creditable withholding tax was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year indicating utilization or carrying over are indispensable. However, the claimant must first establish its claim for refund, such that it did not utilize or carry over or that it opted to utilize and carry over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year.

Concomitantly, the presentation of the quarterly income tax return and the annual income tax return to prove the fact that excess creditable withholding tax was not utilized or carried over or opted to be utilized and carried over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year is not only for convenience to facilitate the tax administration process but it is part of the requisites to establish the claim for refund. Section 76 of the NIRC of 1997 provides that if the taxpayer claimant carries-over and applies the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years, the same is irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed. (*Boldfacing supplied.*)

Further, in the case of *Benguet Management Corporation v. Commissioner of Internal Revenue*,[17] the Court *En Banc* agreed with the denial of the claim made by the Second Division of the Court, stating as follows:

After a close review of the records, We agree with the following findings of the Court in Division that petitioner is already barred from

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[17] CTA EB Case No. 200, April 4, 2007.

claiming a refund or a tax credit certificate corresponding to its unutilized tax credits for the year 2001:

> "However, petitioner carried over the declared overpayment for 2001 in the amount of ₱6,249,534.00 to the succeeding quarters of taxable year 2002 as prior year's excess credits (*Annexes C* to *E*, Petition for Review, *Records*, pp. 10-12). As petitioner's own evidence would show (original/tentative annual ITR for CY 12/2001, *Exhibit "A"*), the total declared overpayment of ₱6,249,534.00 for the calendar year 2001, was carried over by the petitioner to the first quarter of 2002 filed on June 11, 2002 (Quarterly Income Tax Return for the 1st Quarter of 2002, *Annex C*, Petition for Review). When petitioner filed its second quarterly return for the year 2002, it likewise carried over the amount of ₱6,249,534.00 as prior year's excess credits (Quarterly Income Tax Return for 2nd Quarter of 2002, *Annex D*, Petition for Review). For the third quarter of 2002, petitioner still carried over the same amount of ₱6,249,534.00 as prior year's excess credits (Quarterly Income Tax Return for 3rd Quarter of 2002, *Annex E*, Petition for Review). The total amount of ₱5,700,272.00 subject of this claim, formed part of the ₱6,249,534.00 overpayment for calendar year 2001 (*Exhibit A-1*).
>
> xxx xxx xxx
>
> We have already ruled in a number of cases that once the option to carry-over has been made, the same becomes irrevocable for that taxable period and the taxpayer can no longer claim for a cash refund or issuance of a tax credit certificate of any overpaid income tax payment for the said year (*Sithe Philippines Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No, 6274, April 4, 2003; Banco Filipino Savings & Mortgage Bank vs. Commissioner of Internal Revenue, CTA Case No. 6374, April 3 2003 and Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6134, May 16, 2003*).
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> Although petitioner did not indicate any chosen option in its 2001 income tax return filed on April 15, 2002, it nevertheless actually carried over the claimed excess credits to the succeeding quarters of 2002, as discussed above. Besides, if the taxpayer fails to signify his option by marking with an "x" the appropriate box in the return, "the excess

payments shall be automatically carried-over to the next taxable period" (BIR Form No. 1702, p. 4). And under the law, once the option of carry over has been exercised, it becomes irrevocable pursuant to Section 76 of the 1997 NIRC above quoted.

In this case, petitioner actually exercised the right to carry over its excess credits to the succeeding taxable quarters. Thus, it can no longer claim for a cash refund or issuance of a tax credit certificate for the subject period.

It is noteworthy that when petitioner filed its amended return for the subject period on November 20, 2002, it still reflected the amount ₱6,249,534.00, as total overpayment to which the claimed amount of ₱5,700,272.00 formed a part of (*Exhibit B-1*).

When petitioner filed its corporate annual income tax return for the calendar year 2002 on April 14, 2003, it still carried over the amount of ₱6,249,534.00 as prior year's excess credits (*Exhibit F, Records*, pp. 91-93). The fact that petitioner amended its 2002 tax return on October 9, 2003 (*Exhibit G, Records*, pp. 94-96) does not alter the fact that petitioner in fact carried over the amount of ₱6,249,534.00 which the claimed amount of ₱5,700,272.00 formed a part of, to the succeeding first, second and third quarters of 2002. And in its 2002 original corporate income tax return, petitioner again carried over the same amount of prior year's excess credits.

Otherwise stated, petitioner may have amended its 2001 income tax return on October 9, 2003 (*Exhibit G*) but this amendment did not undo the act/s already made or exercised. Otherwise, Section 76 is rendered nugatory by a mere act of a taxpayer amending its return.

Any taxpayer can easily aver mistake or error in its declaration and amend its return not only once but several times, as the case may be. It is Our considered view that the amendment of returns allowed by Section 6 of the 1997 Tax Code does not extend to changing of taxpayer's chosen option, much more, an actual exercise of such option under Section 76 of the same Code.

> Thus, taking into account that petitioner actually carried over its prior year's excess tax credits of ₱6,249,534.00 for the calendar year 2001 to the taxable quarters of the succeeding taxable year 2002 (*Annexes C* to *E*, Petition for Review), as well as to its original annual corporate income tax return for calendar year 2002 (*Exhibit F*), it is already barred from claiming a refund or a tax credit certificate corresponding to the unutilized tax credits for the year 2001."

This Court is not strictly governed by technical rules of evidence. However, with the foregoing jurisprudence, the presentation of the succeeding Annual Income Tax Return is not sufficient to establish that petitioner did not apply its claimed unutilized creditable withholding taxes for the first three quarters of 2006.

As exhaustively discussed, the presentation of both the succeeding Quarterly Income Tax Returns and Annual Income Tax Return are very important.

In the case of *PRHC Property Managers, Inc., v. Commissioner of Internal Revenue*,[18] the Court held that petitioner's failure to present its subsequent Quarterly *and* Annual Income Tax Returns to prove that the claimed creditable taxes were not carried over to the succeeding periods and were not utilized to pay petitioner's income tax liability created doubt as to whether petitioner carried over the 2004 excess/unutilized creditable withholding taxes to the subsequent quarters/years. As a result, the claim for refund was denied, pursuant to Section 76 of the 1997 NIRC, as amended.

Therefore, petitioner's Annual Income Tax Return for the calendar year 2006 is not enough for the presentation of its Quarterly Income Tax Returns are vital, without which the Court cannot fully ascertained whether petitioner did not carry

[18] CTA Case No. 7615, September 14, 2010.

over the excess/unutilized creditable withholding taxes to the subsequent quarters of the calendar year 2006.

This doubt could have been avoided had petitioner presented the Quarterly Income Tax Returns for calendar year 2006.[19]

Since tax refunds are in the nature of tax exemptions, and the same are regarded as in derogation of sovereign authority; hence, the same shall be construed *strictissimi juris* against the person claiming such exemption. Therefore, the taxpayer has the burden of proving that it is entitled to its claim.

In sum, the Court finds the evidence adduced by petitioner to be insufficient to support its claim for the issuance of tax credit certificate of excess and unutilized creditable income taxes withheld for the year 2005 in the amount of ₱74,598,430.47.

WHEREFORE, the Petition for Review is hereby **DENIED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

See attached Dissenting Opinion

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[19] Mirant (Navotas II) Corporation *v.* Commissioner of Internal Revenue, CTA Case No. 7618, July 12, 2010.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

PHILIPPINE NATIONAL BANK,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. Case No. 7760

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

SEP 30 2011
ABFernand 1:45 p.m.

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DISSENTING OPINION

PALANCA-ENRIQUEZ, J.:

With all due respect to the Majority, after a careful examination of the pertinent facts of the case, in relation to applicable law and jurisprudence, I cannot agree with the majority to deny the claim for refund of excess and unutilized creditable withholding tax (CWT) for the reason that petitioner failed to present its Quarterly Tax Returns for the first, second and third quarters of 2006.

In the case of *Philam Asset Management, Inc., vs. Commissioner of Internal Revenue (634 SCRA 193),* the Supreme Court ruled that there is no

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basis in law and jurisprudence in requiring the submission of the Income Tax Return (ITR) or the Final Adjustment Return (FAR) of the succeeding year to the BIR in the application for a tax refund of excess CWT. Thusly:

> "Requiring that the ITR or the FAR of the *succeeding* year be presented to the BIR in requesting a *tax refund* has no basis in law and jurisprudence.
>
> *First*, Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the *preceding* -- not the succeeding -- taxable year. Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any of the provisions of the Tax Code that the FAR of the taxable year following the period to which the *tax credits* are originally being applied should also be presented to the BIR.
>
> *Second*, Section 5 of RR 12-94, amending Section 10(a) of RR 6-85, merely provides that claims for the refund of income taxes deducted and withheld from income payments shall be given due course only (1) when it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and (2) when the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and the income tax withheld from that amount.
>
> Undisputedly, the records do not show that the income payments received by petitioner have not been declared as part of its gross income, or that the fact of withholding has not been established. According to the CTA, "[p]etitioner substantially

complied with the x x x requirements" of RR 12-94 "[t]hat the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and x x x [t]hat the income upon which the taxes were withheld were included in the return of the recipient."

The established procedure is that a taxpayer that wants a cash refund shall make a written request for it, and the ITR showing the excess expanded withholding tax credits shall then be examined by the BIR. For the grant of refund, RRs 12-94 and 6-85 state that all pertinent accounting records should be submitted by the taxpayer. These records, however, actually refer only to (1) the withholding tax statements; (2) the ITR of the present quarter to which the excess withholding tax credits are being applied; and (3) the ITR of the quarter for the previous taxable year in which the excess credits arose. To stress, these regulations implementing the law do not require the proffer of the FAR for the taxable year following the period to which the *tax credits* are being applied.

Third, there is no automatic grant of a *tax refund*. As a matter of procedure, the BIR should be given the opportunity "to investigate and confirm the veracity" of a taxpayer's claim, before it grants the refund. Exercising the option for a tax refund or a tax credit does not *ipso facto* confer upon a taxpayer the right to an immediate availment of the choice made. Neither does it impose a duty on the government to allow tax collection to be at the sole control of a taxpayer.

Fourth, the BIR ought to have on file its own copies of petitioner's FAR for the succeeding year, on the basis of which it could rebut the assertion that there was a subsequent credit of the excess income tax payments for the previous year. Its failure to present this vital document to support its contention against the grant of a *tax refund* to petitioner is certainly fatal.

Fifth, the CTA should have taken judicial notice of the fact of filing and the pendency of petitioner's subsequent claim for a refund of excess creditable taxes withheld for 1998. The existence of the claim ought to be known by reason of its judicial functions. Furthermore, it is decisive to and will easily resolve the material issue in this case. If only judicial notice were taken earlier, the fact that there was no carry-over of the excess creditable taxes withheld for 1997 would have already been crystal clear.

Sixth, the Tax Code allows the refund of taxes to a taxpayer that claims it in writing within two years after payment of the taxes erroneously received by the BIR. Despite the failure of petitioner to make the appropriate marking in the BIR form, the filing of its written claim effectively serves as an expression of its choice to request a *tax refund*, instead of a *tax credit*. To assert that any future claim for a tax refund will be instantly hindered by a failure to signify one's intention in the FAR is to render nugatory the clear provision that allows for a two-year prescriptive period.

The above ruling in the Philam case was reiterated in the case of *State Land Investment Corporation vs. Commissioner of Internal Revenue (542 SCRA 117),* where the Supreme Court ruled:

> "As previously mentioned, after paying P4,187,523.00 as income tax due in 1998, there remained an unutilized tax credit of P9,742,270.51. It was not necessary on the part of petitioner to file with the BIR its income tax return for 1999. In Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, we held that the Tax Code merely requires the filing of the final adjustment return for the preceding – not the succeeding – taxable year. Indeed, any refundable amount indicated therein corresponding to the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. Requiring that the income tax return or the

final adjustment return of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence."

Pursuant to the above rulings of the Supreme Court, the submission of the succeeding ITR or FAR is not a requisite in applying for a refund of excess CWT. There is no legal basis to require the claimant to submit quarterly income tax returns for the succeeding periods.

In this case, records reveal that petitioner's Annual Income Tax Return (both original and amended) for calendar 2005 shows a gross income of P1,953,845,787.00 and operating expense of P8,982,976,222.00, resulting to a net operating loss of P7,029,130,435.00. Pursuant to *Section 27(E)(1) of the NIRC of 1997, as amended*, petitioner is still liable for the Minimum Corporate Income Tax ("MCIT") in the amount of P25,509,864.84, computed, as follows: Gross Income subject to MCIT of P1,275,493,242.00 *(Exhibit "HH-010")* x MCIT rate of 2%. Consequently, the excess taxes withheld during the course of the taxable year, while collected legally, partake of the nature of erroneously collected taxes at the end of the taxable year.

In order to be entitled to a claim for refund or issuance of a tax credit certificate or excess creditable withholding tax at source, in the case of *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, 519 SCRA 93, 96*, reiterated in the most recent case of *Commissioner of Internal Revenue vs. Far East Bank and Trust Company (now Bank of the Philippine Islands), G.R. No. 173854, March 15, 2010,* the Supreme Court ruled that a taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:

1) The claim must be filed with the Commissioner of Internal Revenue, within the two-year period from the date of payment of the tax;

2) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld; and

3) It must be shown on the return that the income received was declared as part of the gross income.

First Requisite – Claim for Refund Was Filed Within the Two-Year Prescriptive Period

As regards the first requisite, records show that petitioner filed its Annual Income Tax Return for calendar year ending December 31, 2005 on April 17, 2006, through electronic filing *(Exhibits "II-037" to "II-042").*

Counting two years from April 17, 2006, petitioner had until April 17, 2008, within which to file its claim for issuance of TCC, both administratively and judicially. Hence, petitioner's administrative claim for issuance of TCC on February 22, 2007, amended administrative claim on June 25, 2007, and final letter with attached supporting documents on March 13, 2008 *(Annex "C", Petition for Review)*, as well as the judicial claim for issuance of TCC on April 11, 2008, were all filed within the two-year prescriptive period from the date of the filing of the return on April 17, 2006. It is clear, therefore, that petitioner complied with the first requisite.

Second Requisite – The Taxes Withheld Are Duly Supported by Certificates of Tax Withheld

To prove the fact of withholding of the reported creditable taxes withheld for the first, second, third and fourth quarters of 2005, in the respective amounts of P3,046,230.99, P10,364,879.23, P17,442,040.22, and P43,745,280.03, or in the total amount of P74,598,430.47 *(Exhibits "GG-001" to "GG-024")*, petitioner presented Certificates of Creditable Tax

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Withheld at Source duly issued to it by various withholding agents for the same year *(Exhibits "GG-1" to "GG-1114")*.

However, upon a careful perusal and examination of the Certificates of Creditable Tax Withheld at Source *(Exhibits "GG-1" to "GG-1114")*, I agree with the Court-Commissioned Independent CPA that the amount of P571,738.80, detailed as follows, should be disallowed on the ground that said certificates are not supported by Certificates of Creditable Tax Withheld at Source:

Company	**Nature of Payment**	**Amount of Tax Withheld**
Amado Matute	Sale of Property	P60,000.00
Fortune Homes	Sale of Property	10,320.00
Herminia C. Angeles	Sale of Property	120,000.00
Laarni R. Virrey	Sale of Property	50,640.00
Leonila Z. Baltao	Sale of Property	82,680.00
Louella Belderol	Sale of Property	10,500.00
Sps. Elise/Teresita Oliva	Sale of Property	26,100.00
Sps. Martina/Rowen Lalugan	Sale of Property	60,000.00
Victoria Andamon	Sale of Property	151,738.80
Total		**P571,978.80**

Hence, out of the total claimed amount of P74,598,430.47, only the amount of P74,026,451.67 is duly supported by Certificates of Creditable Tax Withheld at Source.

Third Requisite - The Income Withheld Was Declared as Part of the Gross Income

As regards the third requisite, in its amended 2005 Annual Income Tax Return *(Exhibits "HH-001" to "HH-012")*, petitioner reflected the following gross income:

	Gross Income Per Income Tax Return
Sale of Services	P4,703,788,769.00
Total Sales/Revenues/Receipts/Fees	**P4,703,788,769.00**
Service charges fees commission	P1,721,381,008.00
Foreign exchange gains	1,295,764,717.00
Other income	1,307,041,860.00
Total Other Income	**P4,324,187,585.00**
Grand Total	**P9,027,976,354.00**

However, a comparison of petitioner's amended 2005 Annual Income Tax Return ("ITR") *(Exhibits "HH-001" to "HH-012")* and Audited

Financial Statements ("AFS") *(Exhibits "KK-001" to "KK-085")* shows the following discrepancies in the amount of declared revenues:

Revenue	**Amount per AFS**	**Amount Per 2005 ITR**	**Difference-Amount per AFS is Higher/(Lower)**
Interest Income			
Loans & Receivables	P6,118,239,000.00		
Investment Securities	4,064,096,000.00		
Deposit with Banks & Others	530,918,000.00		
Total Interest Income	**P10,713,253,000.00**	**P4,703,788,769.00**	**P6,009,464,231.00**
Non-Interest Income			
Service Charges, Fees and Commissions	P1,806,022,000.00	P1,721,381,008.31	P84,640,991.69
Foreign Exchange	576,223,000.00	1,295,764,717.00	(719,541,717.00)
Trading & Investment Securities Gains	922,447,000.00	-	922,447,000.00
Miscellaneous Income	1,496,224,000.00	1,307,041,860.71	189,182,139.29
Subtotal	**P4,800,916,000.00**	**P4,324,187,586.02**	**P476,728,413.98**
TOTAL	**P15,514,169,000.00**	**P9,027,976,355.02**	**P6,486,192,644.98**

Said discrepancies in the revenue declared in the 2005 ITR and the AFS were reconciled by petitioner, as shown in *Exhibits "TT-01" to "TT-22"*.

Based on the foregoing, it is clear that of the total gross income reflected in the AFS amounting to P15,514,169,000.00 (P10,713,253,000.00 + P4,800,916,000.00) *(Exhibit "KK-005")*, P9,027,976,355.02 was reported in the last amended 2005 ITR as gross income for income tax purposes. The difference of P6,486,192,644.98 represents valid reconciling items.

Records further show that of the total gross income per General Ledgers for calendar year 2005 amounting to P15,514,170,026.09 *(Exhibits "QQ-0001" to "QQ-1463")*, P15,514,169,000.00 was recorded in petitioner's AFS. A careful verification of the income subjected to withholding tax, as shown in the Certificates of Creditable Tax Withheld at Source *(Exhibits "GG-1" to "GG-1114"),* shows that they were supported by original accounting tickets or input sheets *(Exhibit "LL")* and original Deeds of Absolute/Conditional Sale *(Exhibit "MM").* These incomes/revenues were in turn recorded in petitioner's General Ledgers.

I, therefore, agree with the Court-Commissioned Independent CPA that the duly supported creditable withholding taxes of P74,026,451.67 were withheld on income payments, totaling to P1,609,486,172.80, which were summarized per nature of income payment, broken down, as follows:

	Per Certificates		
	Income Payments	**Income Tax Withheld**	**Exhibit**
Interest Income on Loan & Receivables	P469,885,059.27	P9,450,108.42	*Exhibit "O", Annex "C-1"*
Non-Interest Income			
Service Charges, Fees & Commissions	P123,484,356.93	P4,298,973.03	*Exhibit "O", Annex "C-2"*
Other Income (Rentals)	82,115,421.29	4,006,731.65	*Exhibit "O", Annex "C-3"*
Total	P205,599,778.22	P8,305,704.68	
Sale of Real Properties	P934,001,335.32	56,270,638.57	*Exhibit "O", Annex "C-4"*
Total	**P1,609,486,172.80**	**P74,026,451.67**	

From the foregoing, it is clear that the revenue amounting to P1,609,486,172.80 (related to the income payments on which the taxes sought to be claimed for the issuance of TCC in the amount of P74,026,451.67 were withheld, as reflected in the certificates) was reported as part of petitioner's last amended 2005 Annual Income Tax Return.

In sum, petitioner has sufficiently established its entitlement for the issuance of TCC for taxable year 2005, but in the reduced amount of P74,026,451.67, computed, as follows:

Claimed Creditable Taxes Withheld	P74,598,430.47
Less: Amount not Supported by Certificates of Creditable Tax Withheld at Source	P571,738.80
Refundable Excess Tax Credits	**P74,026,451.67**

For all the foregoing, I vote to partially grant petitioner's claim for refund of excess or unutilized CWT in the reduced amount of P74,026,451.67.

OLGA PALANCA-ENRIQUEZ
Associate Justice